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a length between the lower most portion of the body and the lower most portion of the door being a predetermined amount so that the confectionary items can be extracted from the body while the body is inserted between the wrapper and the cigarette package.

REMARKS

Claims 1, 3-17, 19-32, 34-39, 41, 43 and 44 are pending in the present application, with claims 1, 3-8, 10-15, 17, 19-21, 23, 25-28, 30, 32, 34-36, 38, 39, 41, 43 and 44 amended herein. Claims 2, 18, 33, 40, 42 and 45 have been canceled without prejudice and disclaimer.

Claims 1-45 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Applicant has amended the claims herein to more comprehensively cover the scope of the present application. In so doing, Applicant respectfully submits that any indefinite claim language has been amended and therefore requests that the rejection be withdrawn.

Claims 1-8, 10-13, 16-21, 23-28, 30-36 and 38-45 were rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,538,731 ("Cillario"). For at least the reasons set

forth below, Applicant respectfully traverses the rejection of the above enumerated claims.

Cillario appears to relate to a container for storing small objects, such as confectionary products. The container has substantially the form of a right prism. As shown in Fig. 4, the body of the container has a base wall 2, two minor walls 3, 4 and two major walls 5. [Col. 3, lines 1-6].

Cillario, however, does not teach every element recited in independent claims 1, 17, 25, 32, 39, 41, 43 and 44 of the present application for at least the following reasons. Specifically, as to claims 1, 17, 25, 32, 39, 41, 43 and 44, Cillario fails to teach:

- "the bottom portion including a tapered edge operable for inserting the body between the wrapper and the cigarette package", as recited in amended claims 1, 17, 25 and 32;
- "a length between the bottom wall and the lower most portion of the door being a predetermined amount so that the confectionary items can be extracted from the body while the body is inserted between the wrapper and the cigarette package", as recited in amended claims 39, 41 and 44; and
- "a length between the upper most portion of the body and the lower most portion of the body being a predetermined amount so that the flip top of the cigarette package can be

opened and the at least one cigarette can be extracted from the cigarette package while the body is inserted between the wrapper and the cigarette package", as recited in amended claim 43.

Rather, Cillario simply teaches a container having a rectangular cross section. Cillario is devoid of any teaching, or suggestion, of a tapered edge, as recited in amended claims 1, 17, 25 and 32. Further, Cillario is devoid of any teaching regarding a container having measurements so that "confectionary items can be extracted from the body while the body is inserted between the wrapper and the cigarette package", as recited in amended claims 39, 41 and 44, and "the flip top of the cigarette package can be opened and the at least one cigarette can be extracted from the cigarette package while the body is inserted between the wrapper and the cigarette package", as recited in amended claim 43.

Accordingly, Applicant respectfully submits that independent claims 1, 17, 25, 32, 39, 41, 43 and 44 are not anticipated by Cillario and therefore respectfully request that the rejection be withdrawn.

Claims 3-8, 10-13 and 16 depend from and further limit claim 1, claims 19-21, 23 and 24 depend from and further limit claim 17, claims 26-28, 30 and 32 depend from and further limit claim 25, and claims 34-36 and 38 depend from and further limit

claim 32, and, for at least the reasons stated above in connection with claims 1, 17, 25 and 32 are not anticipated by Cillario.

Claims 1-8, 10-21, 23-28, 30-36 and 38-45 were rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,804,113 ("Ciaccio"). For at least the reasons set forth below, Applicant respectfully traverses the rejection of the above enumerated claims.

Ciaccio appears to relate to a dispensing receptacle for condiments, such as salt and pepper. The dispensing receptacle includes a container 12 that has a rectangular cross section with the peripheral wall 16 defining a pair of substantially parallel wall portions 20. [Col. 2, lines 57-61].

Ciaccio, however, does not teach every element recited in independent claims 1, 17, 25, 32, 39, 41, 43 and 44 of the present application for at least the following reasons. Specifically, as to claims 1, 17, 25, 32, 39, 41, 43 and 44, Ciaccio fails to teach:

- "the bottom portion including a tapered edge operable for inserting the body between the wrapper and the cigarette package", as recited in amended claims 1, 17, 25 and 32;
- "a length between the bottom wall and the lower most portion of the door being a predetermined amount so that the confectionary items can be extracted from the body

while the body is inserted between the wrapper and the cigarette package", as recited in amended claims 39, 41 and 44; and

- "a length between the upper most portion of the body and the lower most portion of the body being a predetermined amount so that the flip top of the cigarette package can be opened and the at least one cigarette can be extracted from the cigarette package while the body is inserted between the wrapper and the cigarette package", as recited in amended claim 43.

Rather, like Cillario, Ciaccio simply teaches a container having a rectangular cross section. Ciaccio is devoid of any teaching, or suggestion, of a tapered edge, as recited in amended claims 1, 17, 25 and 32. Ciaccio is also devoid of any teaching regarding a container having measurements so that "confectionary items can be extracted from the body while the body is inserted between the wrapper and the cigarette package", as recited in amended claims 39, 41 and 44, and "the flip top of the cigarette package can be opened and the at least one cigarette can be extracted from the cigarette package while the body is inserted between the wrapper and the cigarette package", as recited in amended claim 43.

Accordingly, Applicant respectfully submits that independent claims 1, 17, 25, 32, 39, 41, 43 and 44 are not

anticipated by Ciaccio and therefore respectfully request that the rejection be withdrawn.

Claims 3-8, 10-16 depend from and further limit claim 1, claims 19-21, 23 and 24 depend from and further limit claim 17, claims 26-28, 30 and 32 depend from and further limit claim 25, and claims 34-36 and 38 depend from and further limit claim 32, and, for at least the reasons stated above in connection with claims 1, 17, 25 and 32 are not anticipated by Ciaccio.

Claims 1-14 and 16-45 were rejected under 35 U.S.C. 103(a) as being unpatentable over Cillario in view of U.S. Patent No. 5,636,732 ("Gilels et al."). For at least the reasons set forth below, Applicant respectfully traverses the rejection of the above enumerated claims.

Gilels et al. appears to relate to a cap for an open package of chewing gum. The cap retains the chewing gum in the package and allows the chewing gum to be readily accessible. [Col. 1, 52 to Col. 4, line 1]. The package has a rectangular cross section. [Col, 2, lines 32-35].

Gilels et al., like Cillario (and Ciaccio), merely teach a container or package having a rectangular cross section. These references fail to teach or even suggest, alone or in combination, a tapered edge, as recited in amended claims 1, 17, 25 and 32. These references also do not teach or suggest, alone or in combination, a container having particular measurements

for use with a cigarette package, as recited in claims 39, 41, 43 and 44. Thus, based on the references, the subject matter recited in amended independent claims 1, 17, 25, 32, 39, 41, 43 and 44 would not have been obvious to one having ordinary skill in the art at the time the invention was made.

Accordingly, Applicant respectfully requests that this rejection be withdrawn.

Claims 3-16 depend from and further limit claim 1, claims 19-24 depend from and further limit claim 17, claims 26-30 and 32 depend from and further limit claim 25, and claims 34-38 depend from and further limit claim 32, and, for at least the reasons stated above in connection with claims 1, 17, 25 and 32 are patentable over Cillario in view of Gilels et al.

Claim 15 was rejected under 35 U.S.C. 103(a) as being unpatentable over Cillario in view of Gilels et al. and further in view of Ciaccio.

Claim 15 depends from and further limits claim 1, and, for at least the reasons stated above in connection with claim 1 is not unpatentable over Cillario in view of Gilels et al. and further in view of Ciaccio.

This communication is believed to be fully responsive to the Office Action and every effort has been made to place the application in condition for allowance. The claims, in view of the foregoing explanation, are believed to be patentable over


the cited art, and a favorable Office Action is hereby earnestly solicited.

If a telephone interview would be of assistance in advancing prosecution of the subject application, Examiner is requested to telephone the number provided below.

Attached hereto is a marked-up version of the changes made to the claims by the current amendment to 37 C.F.R. §1.121. The attached page is captioned "VERSION WITH MARKINGS TO SHOW CHANGES MADE."

Respectfully submitted,

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VERSION WITH CHANGES MARKED-UP

Claims 2, 18, 33, 40, 42 and 45 have been canceled without prejudice and disclaimer.

Claims 1, 3-8, 10-15, 17, 19-21, 23, 25-28, 30, 32, 34-36, 38, 39, 41, 43 and 44 have been amended without prejudice and disclaimer as follows:

In the claims:

1. (AMENDED) A dispensing container operable for use with a cigarette package, the cigarette package being operable for storing at least one cigarette and having a wrapper encasing a portion of the cigarette package, comprising:

a body ~~having a chamber~~ for storing confectionary items, the body having a top portion and a bottom portion, the bottom portion including a tapered edge, the tapered edge operable for inserting the body between the wrapper and the cigarette package; and

a door connected to the top portion of the body and operable to dispense the confectionary items stored in the chamber, the body further including
~~a top portion, the top portion including the door, and~~
~~a bottom portion having a tapered edge adapted for inserting the body into a tight location.~~

--3. (AMENDED) The dispensing container as set forth in claim 2 1, wherein

~~the body includes a bottom wall and the door includes a lower most portion,~~ a length between the ~~bottom wall~~ lower most portion of the body and the lower most portion of the door is a predetermined amount so that the door can be opened and the confectionary items can be extracted from ~~the chamber of the~~ body while the body is inserted between the wrapper and the cigarette package.

--4. (AMENDED) The dispensing container as set forth in claim 2 1, wherein

the cigarette package is ~~a hard cigarette package having~~ constructed of a substantially rigid material and has a flip top.

--5. (AMENDED) The dispensing container as set forth in claim 2 4, wherein

~~the body includes a top wall and a bottom wall,~~ a length between the ~~top wall~~ upper most portion of the body or the door and the ~~bottom wall~~ lower most portion of the body is a predetermined amount so that the flip top can be opened and ~~a~~ the at least one cigarette can be extracted from the cigarette

package while the body is inserted between the wrapper and the cigarette package.

--6. (AMENDED) The dispensing container as set forth in claim 1, wherein
the confectionary items are ~~mint~~ breath freshening
products.

--7. (AMENDED) The dispensing container as set forth in claim 1, wherein
the confectionary items are chewing gum products.

--8. (AMENDED) The dispensing container as set forth in claim 1, wherein
the confectionary items are ~~candies~~ one of hard and soft
candy products.

--10. (AMENDED) The dispensing container as set forth in claim 2 1, wherein
the wrapper is constructed of a flexible plastic ~~wrapper~~
material.

--11. (AMENDED) The dispensing container as set forth in claim 2 1, wherein

the cigarette package is ~~a soft cigarette package~~
constructed of a substantially flexible material.

--12. (AMENDED) The dispensing container as set forth in
claim 2 1, wherein

the height of the cigarette package is a tall at least
twice the width of the cigarette package.

--13. (AMENDED) The dispensing container as set forth in
claim 2 1, wherein

the width of the cigarette package is a wide greater than
the height of the cigarette package.

--14. (AMENDED) The dispensing container as set forth in
claim 1, wherein the body includes a first side and a second
side, and further comprising:

a second door, the door being located on a the first side
of the body and the second door being located on a the second
side of the body, each door operable to dispense the
confectionary items stored in the ~~chamber~~ body.

--15. (AMENDED) The dispensing container as set forth in
claim 1, wherein the body includes a first side and a second
side, and further comprising:

a first chamber in the body for storing the confectionary items;

a second door; and

a second chamber in the body, the door being located on a the first side of the body and operable to dispense the confectionary items stored in the first chamber and the second door being located on a the second side of the body and operable to dispense items stored in the second chamber.

--17. (AMENDED) A dispensing container operable for use with a cigarette package, the cigarette package being operable for storing at least one cigarette and having a wrapper encasing a portion of the cigarette package, comprising:

a body ~~having a chamber~~ for storing confectionary items, the body having a top portion and a bottom portion, the bottom portion including a tapered edge, the tapered edge operable for inserting the body between the wrapper and the cigarette package; and

a door connected to the top portion of the body and operable to dispense the confectionary items stored in the ~~chamber body, the body further including~~

~~a top portion, the top portion having a top wall and including the door having a lower most portion, and~~

~~a bottom portion including a tapered edge having a bottom wall,
the tapered edge being adapted for inserting the body between a
wrapper of a cigarette package and the cigarette package,
wherein the door is positioned~~

a length between the lower most portion of the body and the
lower most portion of the door being a predetermined amount so
that the confectionary items can be extracted from the chamber
of the body while the body is inserted between the wrapper and
the cigarette package.

--19. (AMENDED) The dispensing container as set forth in
claim 17, wherein

the confectionary items are mints breath freshening
products.

--20. (AMENDED) The dispensing container as set forth in
claim 17, wherein

the confectionary items are chewing gum products.

--21. (AMENDED) The dispensing container as set forth in
claim 17, wherein

the confectionary items are candies one of hard and soft
candy products.

--23. (AMENDED) The dispensing container as set forth in claim 17, wherein

the wrapper is constructed of a flexible plastic wrapper material.

--25. (AMENDED) A dispensing container operable for use with a cigarette package, the cigarette package being operable for storing at least one cigarette and having a flip top and a wrapper encasing a portion of the cigarette package, comprising:

a body having ~~a chamber~~ for storing confectionary items, the body having a top portion and a bottom portion, the bottom portion including a tapered edge, the tapered edge operable for inserting the body between the wrapper and the cigarette package; and

a door connected to the top portion of the body and operable to dispense the confectionary items stored in the ~~chamber body, the body further including a top portion, the top portion including the door and a top wall, and a bottom portion including a tapered edge having a bottom wall, the tapered edge being adapted for inserting the body between a wrapper of a cigarette package and the cigarette package, wherein~~

a length between the ~~top wall~~ upper most portion of the body or door and the ~~bottom wall~~ lower most portion of the body being a predetermined amount so that a the flip top of a

the cigarette package can be opened and a the at least one cigarette can be extracted from the cigarette package while the body is inserted between the wrapper and the cigarette package.

--26. (AMENDED) The dispensing container as set forth in claim 25, wherein

the confectionary items are ~~mints~~ breath freshening products.

--27. (AMENDED) The dispensing container as set forth in claim 25, wherein

the confectionary items are chewing gum products.

--28. (AMENDED) The dispensing container as set forth in claim 25, wherein

the confectionary items are ~~candies~~ one of hard and soft candy products.

--30. (AMENDED) The dispensing container as set forth in claim 25, wherein

the wrapper is constructed of a flexible plastic wrapper material.

--32. (AMENDED) A dispensing container operable for use with a cigarette package, the cigarette package being operable for storing at least one cigarette and having a flip top and a wrapper encasing a portion of the cigarette package, comprising:

a body ~~having a chamber~~ for storing confectionary items, the body having a top portion and a bottom portion, the bottom portion including a tapered edge, the tapered edge operable for inserting the body between the wrapper and the cigarette package;

a hinge; and

a door connected to the top portion of the body by the hinge and operable to dispense the confectionary items stored in the ~~chamber body, the body further including~~

~~a top portion, the top portion including the door having a lower most portion and a top wall, and a bottom portion including a tapered edge having a bottom wall, the tapered edge being adapted for inserting the body between a wrapper of a cigarette package and the cigarette package, wherein~~

a length between the ~~top wall~~ uppermost portion of the body or the door and the ~~bottom wall is~~ lower most portion of the body being a predetermined amount so that a the flip top of the cigarette package can be opened and a the at least one cigarette can be extracted from the cigarette package while the body is inserted between the wrapper and the cigarette package, and

~~the door is positioned~~ a length between the lower most
portion of the body and the lower most portion of the door being
a predetermined amount so that the confectionary items can be
extracted from ~~the chamber of~~ the body while the body is
inserted between the wrapper and the cigarette package.

--34. (AMENDED) The dispensing container as set forth in
claim 32, wherein

the confectionary items are ~~mints~~ breath-freshening
products.

--35. (AMENDED) The dispensing container as set forth in
claim 32, wherein

the confectionary items are chewing gum products.

--36. (AMENDED) The dispensing container as set forth in
claim 32, wherein

the confectionary items are ~~candies~~ one of hard and soft
candy products.

--38. (AMENDED) The dispensing container as set forth in
claim 32, wherein

the wrapper is constructed of a flexible plastic wrapper
material.

--39. (AMENDED) A dispensing container ~~adapted to be used~~
operable for use with a hard cigarette package, the cigarette
package being operable for storing at least one cigarette and
having a flip top and a wrapper encasing a portion of the
cigarette package, comprising:

a body ~~having a chamber for storing confectionary items and~~
~~adapted to be inserted,~~ the body operable for insertion between
~~a the wrapper of the cigarette package~~ and the cigarette
package, the body ~~further including~~ defined by

a top wall,

a pair of side walls,

a bottom wall,

a front wall having a first lower tapered edge and

a back wall having a second lower tapered edge;

a hinge; and

a door connected to the body by the hinge and operable to
dispense the confectionary items stored in the ~~chamber body, the~~
~~door having a lower most portion, wherein~~

a length between the top wall and the bottom wall ~~is being~~
a predetermined amount so that the flip top of the cigarette
package can be opened and ~~a~~ the at least one cigarette can be
extracted from the cigarette package while the body is inserted

between the wrapper ~~of the cigarette package~~ and the cigarette package, and

~~the door is positioned a length between the bottom wall and~~
the lower most portion of the door being a predetermined amount
so that the confectionary items can be extracted from the
~~chamber of the body while the body is inserted between the~~
wrapper and the cigarette package.

--41. (AMENDED) A dispensing container operable for use
with a cigarette package, the cigarette package being operable
for storing at least one cigarette and having a wrapper encasing
a portion of the cigarette package, comprising:

a body ~~having a chamber~~ for storing confectionary items,
the body having a top portion and a bottom portion; and

a door connected to the top portion of the body and
operable to dispense the confectionary items stored in the
~~chamber body, the body further including a top portion, the top~~
~~portion having a top wall and including the door having a lower~~
~~most portion, and a bottom portion having a bottom wall, wherein~~
~~the door is positioned~~

a length between the lower most portion of the body and the
lower most portion of the door being a predetermined amount so
that the confectionary items can be extracted from the ~~chamber~~

~~of the body while the body is inserted between a the wrapper of~~
~~a cigarette package and the cigarette package.~~

--43. (AMENDED) A dispensing container operable for use
with a cigarette package, the cigarette package being operable
for storing at least one cigarette and having a flip top and a
wrapper encasing a portion of the cigarette package, comprising:

a body ~~having a chamber~~ for storing confectionary items,
the body having a top portion and a bottom portion; and

a door connected to the top portion of the body and
operable to dispense the confectionary items stored in the
~~chamber body, the body further including a top portion, the top~~
~~portion including the door and a top wall, and a bottom portion~~
~~having a bottom wall, wherein~~

a length between the ~~top wall~~ upper most portion of the
body or the door and the ~~bottom wall~~ is lower most portion of
the body being a predetermined amount so that a the flip top of
a the cigarette package can be opened and a the at least one
cigarette can be extracted from the cigarette package while the
body is inserted between a the wrapper of ~~a cigarette package~~
and the cigarette package.

--44. (AMENDED) A dispensing container operable for use
with a cigarette package, the cigarette package being operable

for storing at least one cigarette and having a flip top and a wrapper encasing a portion of the cigarette package, comprising:

a body having a chamber for storing confectionary items,
the body having a top portion and a bottom portion; and

a door connected to the top portion of the body and
operable to dispense the confectionary items stored in the
chamber body, the body further including a top portion, the top
portion including the door having a lower most portion and a top
wall, and a bottom portion including having a bottom wall,
wherein

a length between the top wall upper most portion of the
body or the door and the bottom wall is lower most portion of
the body being a predetermined amount so that a the flip top of
a cigarette package can be opened and a the at least one
cigarette can be extracted from the cigarette package while the
body is inserted between a the wrapper of the cigarette package
and the cigarette package, and

the door is positioned a length between the lower most
portion of the body and the lower most portion of the door being
a predetermined amount so that the confectionary items can be
extracted from the chamber of the body while the body is
inserted between the wrapper and the cigarette package.